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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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7590

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EXAMINER

WHITE, DWAYNE J

ART UNIT

PAPER NUMBER

3745

DATE MAILED: 01/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/752,972

Applicant(s)

FRAMPTON, THOMAS C.

Examiner

Dwayne J. White

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-39 and 41-47 is/are allowed.
- 6) ☒ Claim(s) 40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Response to Amendment***

Applicant's amendment filed 10 November 2005 has been fully considered. Claims 1-47 are pending. Applicant's amendments to claims 1-9, 12 and 17-39 have been considered and deemed to overcome the rejection under 35 U.S.C 101. However, since Applicant has not amended, argued or submitted a Terminal Disclaimer for claim 40, the rejection under 35 U.S.C 101 has been maintained.

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101, which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van. Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 40 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 40 of U.S. Patent No. 6,726,451. Although the conflicting claims are not identical, they are not patentably distinct. Claim 40 of the patent "anticipates" application claim 40. Accordingly, application claim 40 is not patentably distinct from patent claim 40. Here, patent claim 40 requires:

“A blade mounting arrangement for a ceiling fan of the type that typically includes a downrod for supporting the fan from the ceiling, a motor, a shaft rotatably connected to the motor so that the motor can turn the shaft about the shaft's longitudinal axis, a motor housing supported by the shaft, and fan blades mounted for rotation to the fan at spaced positions circumscribing the shaft, wherein, upon rotation, the blades define a circle of rotation, and the fan achieves a center of rotational gravity that lies on the shaft's longitudinal axis as a result, the blade mounting arrangement comprising: at least two fan blades connected for rotation to the fan and extending in one semicircle of rotation; a stabilizing member extending from the fan in a second semicircle of rotation relative to the at least two fan blades, wherein the stabilizing member stabilizes the rotating weight of the blades upon rotation of the fan such that the center of rotational gravity of the fan lies on the longitudinal axis of the shaft; and, a motor housing supported by the shaft, the housing having an upper casing and a lower casing, wherein the lower casing is free to rotate about the longitudinal axis relative to the upper casing.”

While application claim 40 only requires:

“A blade mounting arrangement for a ceiling fan of the type that typically includes a downrod for supporting the fan from the ceiling, a motor, a shaft rotatably connected to the

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motor so that the motor can turn the shaft about the shaft's longitudinal axis, a motor housing supported by the shaft, and fan blades mounted for rotation to the fan at spaced positions circumscribing the shaft, wherein, upon rotation, the blades define a circle of rotation, and the fan achieves a center of rotational gravity that lies on the shaft's longitudinal axis as a result, the blade mounting arrangement comprising: at least two fan blades *asymmetrically* connected for rotation to the fan and extending in one semicircle of rotation; a stabilizing member extending from the fan in a second semicircle of rotation relative to the at least two fan blades, wherein the stabilizing member stabilizes the rotating weight of the blades upon rotation of the fan such that the center of rotational gravity of the fan lies on the longitudinal axis of the shaft; and, a motor housing supported by the shaft, the housing having an upper casing and a lower casing, wherein the lower casing is free to rotate about the longitudinal axis relative to the upper casing.”

Thus it is apparent that the more specific patent claim 40 encompasses application claim 40. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer. Note that since Application claim 40 is anticipated by Patent claim 40 and since anticipation is the epitome of obviousness, then Application claim 40 is obvious over Patent claim 40.

CONCLUSION

Allowable Subject Matter

Claims 1-39 and 41-47 are allowed.

Contact Information

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dwayne J. White whose telephone number is (571) 272-4825. The examiner can normally be reached on 7:00 am to 4 pm T-F and alternate Mondays.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Look can be reached on (571) 272-4820. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Dwayne J White
Patent Examiner
Art Unit 3745

DJW


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1/6/06